

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOLMAN, et al.,

No. C 11-00180 CW (DMR)

Plaintiffs,

**NOTICE OF REFERENCE AND ORDER
RE DISCOVERY PROCEDURES AND
PENDING DISCOVERY DISPUTES**

v.

EXPERIAN INFORMATION SOLUTIONS,
INC., et al.,

Defendants.

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter has been referred to Magistrate Judge Donna M. Ryu for resolution of the parties' joint reports on their discovery disputes (doc. nos. 117, 119, 123, 128), as well as all further discovery matters.

The court **DENIES** the pending discovery motions without prejudice. With respect to the discovery dispute presented in Joint Report #2, IT IS ORDERED that Defendant must provide an updated privilege log, which shall be filed on the court docket, which includes information about the documents that are withheld as privileged or protected with sufficient detail so as to enable other parties and the court to assess the claim. Fed. R. Civ. P. 26(b)(5)(A). See section below entitled "Privilege Logs." Defense counsel must also verify in writing that the updated privilege log is complete. Defendant must file the updated privilege log by no later than **May 3, 2012**.

IT IS FURTHER ORDERED that lead trial counsel must meet and confer **in person** to discuss the discovery disputes raised in all four joint reports and file updated joint letters, after meeting and conferring, that accurately reflect any remaining disputes pursuant to this court's discovery procedures. *See* section below entitled "Resolution of Discovery Disputes." Any joint letter regarding the remaining discovery disputes shall be filed no later than **May 14, 2012**. Joint discovery letter briefs must be e-filed under the Civil Events category of Motions and Related Filings > Motions - General > "Discovery Letter Brief." Any position taken in a joint letter brief that is not substantially justified will be subject to sanctions pursuant to Rule 37.

A hearing on the remaining discovery disputes is set for **May 24, 2012 at 11:00 a.m.** at the U.S. District Court, Courtroom 4, 1301 Clay Street, Oakland, California 94612. Parties must be prepared to remain at the court after the hearing, if necessary, to meet and confer on any discovery disputes.

Parties shall comply with the procedures in this order, the Federal Rules of Civil Procedure, and the Northern District of California's Local Rules, General Orders, and General Standing Orders. Local rules, general orders, general standing orders, and a summary of the general orders' electronic filing requirements (including the procedures for emailing proposed orders to chambers) are available at <http://www.cand.uscourts.gov>. The parties' failure to comply with any of the rules or orders may be a ground for sanctions.

RESOLUTION OF DISCOVERY DISPUTES

In order to respond to discovery disputes in a flexible, cost-effective and efficient manner, the court uses the following procedure. The parties shall not file formal discovery motions. Instead, as required by the federal and local rules, the parties shall first meet and confer to try to resolve their disagreements. The meet and confer session must be ***in person or by telephone***, and may not be conducted by letter, e-mail, or fax. If disagreements remain, the parties shall file a joint letter no later than five (5) business days after the meet and confer session. **Lead trial counsel for both parties must sign the letter**, which shall include an attestation that the parties met and conferred in person or by telephone regarding all issues prior to filing the letter. Going issue-by-issue, the joint letter shall describe each unresolved issue, summarize each party's position with appropriate legal

1 authority; and provide each party's final proposed compromise before moving to the next issue. The
 2 joint letter shall not exceed ten (10) pages without leave of court. In the rare instance that a joint
 3 letter is not possible, each side may submit a letter not to exceed four (4) pages, which shall include
 4 an explanation of why a joint letter was not possible. When appropriate, the parties may submit one
 5 exhibit to the letter that sets forth each discovery request at issue in full, followed immediately by
 6 the objections and/or responses thereto. No other information shall be included in any such exhibit.
 7 No other exhibits shall be submitted without prior approval by the court. The court will review the
 8 submission(s) and determine whether formal briefing or proceedings are necessary.

9 In emergencies during discovery events (such as depositions), any party may, after
 10 exhausting good faith attempts to resolve disputed issues, seek judicial intervention pursuant to Civil
 11 L.R. 37-1(b) by contacting the court through the courtroom deputy. If the court is unavailable, the
 12 discovery event shall proceed with objections noted for the record.

13 In the event that a discovery hearing is ordered, the court has found that it is often efficient
 14 and beneficial for the parties if counsel appear *in person*. This provides the opportunity, where
 15 appropriate, to engage counsel in resolving aspects of the discovery dispute while remaining
 16 available to rule on any disputes that counsel are not able to resolve. For this reason, the court
 17 expects counsel to appear in person. Permission for a party to attend by telephone may be granted,
 18 in the court's discretion, upon written request made at least two weeks in advance of the hearing if
 19 the court determines that good cause exists to excuse personal attendance, and that personal
 20 attendance is not needed in order to have an effective discovery hearing. The facts establishing good
 21 cause must be set forth in the request.

22 CHAMBERS COPIES AND PROPOSED ORDERS

23 All filings relating to a discovery dispute referred to Magistrate Judge Ryu shall list the civil
 24 case number and the district court judge's initials followed by the designation "(DMR)."

25 Under Civil L.R. 5-1(b), parties must lodge an extra paper copy of any filing and mark it as a
 26 copy for "Chambers." Please three-hole punch the chambers copy and submit it to the Oakland
 27 Clerk's Office. In a case subject to electronic filing, chambers copies must be submitted by the
 28 close of the next court day following the day the papers are filed electronically. Any proposed

1 stipulation or proposed order in a case subject to electronic filing shall be submitted by email to
2 dmrpo@cand.uscourts.gov as a word processing format attachment on the same day that the
3 document is e-filed. This address should only be used for this stated purpose unless otherwise
4 directed by the court.

5 **PRIVILEGE LOGS**

6 If a party withholds information that is responsive to a discovery request by claiming that it
7 is privileged or otherwise protected from discovery, that party shall *promptly* prepare and provide a
8 privilege log that is sufficiently detailed and informative for the opposing part(ies) to assess whether
9 a document's designation as privileged is justified. *See* Fed.R.Civ.P. 26(b)(5). The privilege log
10 shall set forth the privilege relied upon and specify separately for each document or for each
11 category of similarly situated documents:

- 12 a. The title and description of the document, including number of pages or Bates-
13 number range;
- 14 b. The subject matter addressed in the document;
- 15 c. The identity and position of its author(s);
- 16 d. The identity and position of all addressees and recipients;
- 17 e. The date the document was prepared and, if different, the date(s) on which it was sent
18 to or shared with persons other than its author(s); and
- 19 f. The specific basis for the claim that the document is privileged or protected.

20 Failure to furnish this information promptly may be deemed a waiver of the privilege or protection.

21 IT IS SO ORDERED.

22
23 Dated: April 26, 2012



24
25 DONNA M. RYU
United States Magistrate Judge
26
27
28